

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THOMAS R. WOODSON,

Plaintiff,

v.

R.N. ORTIZ et al,

Defendants.

CASE NO. 15cv1285 WQH (RBB)

ORDER

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation (ECF No. 25) issued by United States Magistrate Judge Ruben B. Brooks.

I. Background

On June 9, 2015, Petitioner Thomas R. Woodson, a former state prisoner proceeding pro se and in forma pauperis, filed a complaint. (ECF No. 1). Woodson claims that Defendants Ortiz, Orduna, Kim, Stepke, Ball, Gutierrez, and Dogonyaro (“Defendants”) violated his rights by failing to treat an injury to his hand in a timely manner while he was incarcerated at Calipatria State Prison. On October 27, 2015, Defendants filed a motion to dismiss Plaintiff’s complaint. (ECF No. 13). On November 25, 2015, Plaintiff filed an opposition. (ECF No. 15). On December 10, 2105, Defendants filed a reply. On January 29, 2016, Plaintiff filed a motion for appointment of counsel. (ECF No. 23).

On April 8, 2016, United State Magistrate Judge Ruben B. Brooks issued the Report and Recommendation, recommending that the motion to dismiss (ECF No. 13)

1 be granted in part and denied in part. The Report and Recommendation also
2 recommended that the amended Motion for appointment of counsel (ECF No. 23) be
3 denied. The docket reflects that no objections have been filed to the Report and
4 Recommendation.

5 **II. Discussion**

6 The duties of the district court in connection with a report and recommendation
7 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
8 U.S.C. § 636(b). The district judge must “make a de novo determination of those
9 portions of the report . . . to which objection is made,” and “may accept, reject, or
10 modify, in whole or in part, the findings or recommendations made by the magistrate.”
11 28 U.S.C. § 636(b). The district court need not review de novo those portions of a
12 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416
13 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
14 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the [Federal Magistrates Act]
15 requires a district judge to review, de novo, findings and recommendations that the
16 parties themselves accept as correct.”).

17 The Court has reviewed the Report and Recommendation, the record, and the
18 submissions of the parties. The Court finds that the Magistrate Judge correctly
19 recommended that the motion to dismiss be granted in part and denied in part, and that
20 the motion for appointment of counsel be denied. The Report and Recommendation is
21 adopted in its entirety.

22 **III. Conclusion**

23 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 25)
24 is adopted in its entirety. Defendants’ motion to dismiss Plaintiff’s Eighth Amendment
25 claims against Defendants Kim, Ortiz, Orduna, and Stepke is denied. Plaintiff’s
26 California Government Code section 845.6 claims against Defendants Kim, Ortiz,
27 Orduna, and Stepke are dismissed with leave to amend.

28 IT IS FURTHER ORDERED that Defendants’ motion to dismiss Plaintiff’s

1 claims against Defendant Ball is granted with leave to amend.

2 IT IS FURTHER ORDERED that Defendants' motion to dismiss Plaintiff's
3 Fourteenth Amendment claim against Defendants Gutierrez and Dogonyaro is granted
4 without leave to amend. Defendants' motion to dismiss Plaintiff's First Amendment
5 claims against Defendants Gutierrez and Dogonyaro's is granted with leave to amend.

6 IT IS FURTHER ORDERED that Plaintiff's amended motion for appointment
7 of counsel (ECF No. 23) is denied without prejudice.

8 DATED: June 23, 2016

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10 **WILLIAM Q. HAYES**
11 United States District Judge
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